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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901 1902.

No. 269.

THE UNION AND PLANTERS' BANK OF MEMPHIS, TENNESSEE, PLAINTIFF IN ERROR,

vs.

THE CITY OF MEMPHIS AND JOHN H. ALSUP, TRUSTEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED MARCH 26, 1902.

(18,089.)

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vs.

THE CITY OF MEMPHIS AND JOHN H. ALSUP, TRUSTEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 26, 1901.

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1 *Transcript of Record.*

Filed Apr. 3, 1899. John B. Clough, Clerk.

In the Circuit Court of the United States for the Western Division of the Western District of Tennessee, at Memphis. In Equity.

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS and JOHN H. ALSUP, as Trustee of Shelby County, Tennessee, Defendants. } 532.

To the honorable the judges of the circuit court of the United States for the sixth circuit:

Your orator, The Union & Planters' Bank, brings this its bill of complaint against The City of Memphis, a municipal corporation by the laws of the State of Tennessee, and John H. Alsup, as trustee of the county of Shelby, and thereupon complaining it says:

That it is a banking corporation, having it- situs at Memphis aforesaid, operating under a special charter granted by the State of Tennessee on the 20th day of March, 1858, and amended by an act passed on the 12th day of February, 1869, and from the date of its organization it has paid to the City of Memphis all the taxes which were assessed against it by the City of Memphis, which it was legally required to do.

That it was for years adjudged, by an unbroken line of decisions in Tennessee, as exempt from the payment of ad valorem taxes to the State of Tennessee, to the county of Shelby, and to the City of Memphis, on account of its shares of stock, other than the charter tax annually to the State of Tennessee. That it has been in

2 many litigations, involving the claim on behalf of the City of Memphis, State of Tennessee and county of Shelby, that it was liable to pay to them, and each of them, ad valorem taxes on different subjects of taxation, and in each and every of said suits your orator maintained that under the clause in its charter, which provided that it should pay annually to the State one-half of one per cent. on each share of capital stock subscribed, it should be exempt from the payment of any other or further tax, either to the State of Tennessee, county of Shelby or the City of Memphis, whether ad valorem taxes or license or privilege taxes.

Your orator further showeth to your honors that on the 22nd day of October, 1891, the State of Tennessee, for the use of the City of Memphis, and the City of Memphis exhibited an original bill in the chancery court of Shelby county, Tennessee, that court having jurisdiction of the subject-matter of the said suit against it, and therein the said City of Memphis claimed that for the year 1897, its capital stock was assessed for taxation, both by the regular assessor and by the county trustee of Shelby county, at the sum of $400,000.00. That the municipal tax rate for that year was $2.35 on each $100.00,

and the amount due from your orator on account of said capital stock was the sum of $9,400.00, with interest from the 1st day of May, 1887.

That for the year 1891 the capital stock of your orator was assessed at the sum of $456,000.00, and that the total tax rate on every $100.00 of property for that year, levied by the State for the use of the City of Memphis, was $1.75 on every $100.00 of property, and that your orator was indebted for municipal taxes in the sum of $7,980.00, with interest thereon from the 1st day of May, 1891.

It was further averred in the aforesaid bill of complaint that by section 14 of the revenue laws of the State, passed in 1887, the same being chapter 2 of the acts of that year, it was enacted as follows:

"Be it further enacted, That this act shall not be so construed, and it shall not co-operate as to exonerate or release from taxation, any company or corporation whose charter exempts stock and the shares thereof from taxation, but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and in all cases in which, by the terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of stock is fixed and
3 prescribed and declared to be in lieu of all the taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus."

The bill also averred that notwithstanding a provision of said section, the capital stock of your orator was not assessed for the years 1888, 1889 or 1890. That ascertaining this fact, the county trustee of Shelby county, as he was by law authorized to do, duly assessed its capital stock for the years aforesaid, and the said City of Memphis was entitled to have and recover on account of the assessments aforesaid of your orator, taxes on its capital stock as follows: For the year 1888, $9,400.00; for the year 1889, $9,870; for the year 1890, $11,926.25, with interest thereon from the 1st of May of the year for which the assessments were made.

The bill further averred that your orator claimed an exemption by virtue of its original charter, and the amendments thereof, of its capital stock from taxation, and also that the aforesaid provisions of the act of 1887 had been continued in force by the succeeding acts of the legislature of the State of Tennessee, and that under the aforesaid acts, the capital stock of your orator in its hands was subject to ad valorem taxes to the City of Memphis.

The bill further set forth that the exemption claimed by your orator was in these words: "That said company shall pay to the State of Tennessee an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes."

The cause thereupon came on to be heard upon a demurrer interposed by your orator, which is in these words:

"In Chancery Court of Shelby Co., Tennessee.

STATE OF TENNESSEE, Use, etc.,
vs.
UNION & PLANTERS' BANK & S. P. READ, Cashier. } 8087, R. D.

Defendants demur to the bill filed against them on 22d of
4 Oct., 1891, as entered above on the rule docket. The ground of this demurrer is that the object sought by this bill is to enforce the payment of taxes by said bank in excess of the sum of an annual tax of one-half of one per cent. on each share of stock subscribed, which is the tax by the terms of the charter contract between said bank and the State of Tenn., which shall be in lieu of all other taxes. Defendant says said bank is not liable for nor bound to pay the taxes demanded and sought to be so collected, and that defendant Read, sued as the cashier, cannot be required to answer said bill nor make the discovery sought from him in and of the effort to collect such taxes.

(Signed) CRAFT & CRAFT,
Solicitors for the Defendant."

Before the Hon. J. S. Galloway, sitting by interchange with the chancellor, who finally adjudged and decreed the demurrer to be well taken upon all the points therein set out.

Said City of Memphis appealed from the aforesaid decree and judgment to the next term of the supreme court of Tennessee for the western district of Tennessee, and filed a transcript of the record in said court, and the case was heard by the said supreme court upon the said appeal, when the court, after full consideration, finally adjudged and decreed on the 7th of June, 1892, that there was no error in the decree of the court below, and expressly adjudged all the points covered by and embraced in the opinion filed by the judge who delivered the opinion. All of which will more fully appear from a certified copy of the record, which is herewith filed and made part of this bill, marked Exhibit A, but which need not be copied.

And your orator further shows to the court that in the opinion of the learned judge he expressly held, considering the decisions of the supreme court of Tennessee, and the decisions of the Supreme Court of the United States, and giving them the controlling weight to which they were entitled, that the charter tax of one-half of one per cent. is in lieu of all other taxes, whether against the bank or its capital stock, or against owners on account of their shares of stock.

Your orator further showeth to your honors that the aforesaid judgment in its favor was based upon the identical claim of exemption now asserted by it in order to defeat the taxes now in question,
and to cancel the assessment against it hereinafter to be set
5 forth, and the judgment and decree aforesaid adjudged its claim to exemption upon the identical same facts and conditions as those hereinafter presented, and your orator is advised and insists that the question of its exemption from the payment of ad

valorem taxes to the City of Memphis on account of its capital stock, has been finally judicial- determined not to exist, because of the judicial construction put upon its exemption in the suit to determine that question between it and the said City of Memphis.

And further complaining, showeth your orator unto your honors, that by chapter 120 of the Acts of 1895, and section — thereof, it was provided that no taxes should thereafter be assessed upon the capital stock of any bank or banking association, but that the shares of stock should be assessed to the individual shareholder, and that under the aforesaid law it was adjudged by the supreme court of the State of Tennessee that its capital stock was not subject to taxation.

Your orator further showeth to your honors that by section 16 of chapter 1 of the Acts of 1887, the General Assembly of the State of Tennessee passed an act which provided as follows:

"Be it further enacted, That this act shall not be so construed, and shall not so operate, as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation: but it is hereby enacted that in all cases where such stock is ex- (sic)

Your orator further showeth to your honors that the aforesaid judgment in its favor was based upon the identical claim of exemption now asserted by it in order to defeat the taxes now in question, and to cancel the assessment against it hereinafter to be set forth, and the judgment and decree aforesaid adjudged its claim to exemption upon the identical facts and conditions as those herein presented. And your orator is advised and insists that this question of its exemption from the payment of ad valorem taxes to the City of Memphis on account of its capital stock, has been thus finally judicially determined in its favor to exist, by a judicial construction of its exemption in the aforesaid suit to determine that very question between it and the said City of Memphis.

And further complaining showeth your orator unto your honors that by chapter 120 of the Acts of 1895 and section 10 thereof, it was provided "that no tax shall hereafter be assessed upon the capital of any bank or banking institution * * * but
6 the shareholders in such bank or other association shall be assessed and taxed upon the market value of their shares of stock therein."

Under the section above, it was also adjudged by the supreme court of the State of Tennessee, that its capital stock was not subject to taxation, and in a suit between said City of Memphis and your orator.

Your orator further avers that subsequently it was enacted as follows: "Be it further enacted, That this act shall not be so construed, and shall not so operate, as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and in all cases in which, by the terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of the stock is fixed and pre-

scribed, and declared to be in lieu of all other taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property, upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the new surplus; provided, however, that where the State has provided, in the charter of any such corporation or company, that it shall pay a stated per cent. on each share of stock subscribed, annually, to the State, which shall be in lieu of all other taxes, it shall be entitled annually to a credit therefor upon its assessment of its capital stock, as hereinbefore provided." Section 16 of chap. 1, Acts 1897.

That afterwards, the value of its capital stock was assessed under the aforesaid section at $132,000.00, and the City of Memphis claims that it is liable to it for ad valorem taxes on said assessment for the year 1899, in a sum exceeding $2,000.00, exclusive of interest and costs.

Your orator avers that it is contractually exempt from the payment of any ad valorem taxes to the City of Memphis, resulting from the aforesaid provision in its charter, and it also avers that the fact of such exemption was conclusively determined by the presumption of the thing adjudged, resulting from the judgment and decree previously rendered between it and the said City of Memphis and yet, notwithstanding its aforesaid contractual exemption,
7 and such conclusive determination of such exemption by the presumption of the thing adjudged between it and said City of Memphis, the said City of Memphis is now attempting to enforce the aforesaid assessment and collect a tax based thereon, to the impairment of the obligation of the contract between your orator and the State of Tennessee, which it is advised and avers is protected by the contract clause of the Constitution of the United States.

And your orator further avers that the said John H. Alsup is county trustee of the county of Shelby, in the State of Tennessee, and by virtue of his office, the duty is imposed upon him to collect ad valorem taxes due to the city of Memphis.

Wherefore, in consideration of the premises, your orator prays that The City of Memphis and John H. Alsup, county trustee and *ex officio* collector of municipal taxes for the city of Memphis, be cited to appear and answer the allegations of this bill, conformably to the practice of this court; and that on final hearing your orator have a decree canceling the aforesaid assessment and establishing, as between it and the said City of Memphis, that it is contractually exempt from the payment to the said City of Memphis of ad valorem taxes on its capital stock; and all such other and further relief as may be suitable and proper in the premises, and that a restraining order issue *pendente lite* prohibiting the said John H. Alsup from any attempt to collect or enforce the said assessment until the final decision of this cause.

CANALL & McKELLAR AND
COOPER & WADDELL,
Sol's for Complainant.

EXHIBIT "A."

STATE OF TENNESSEE,
Shelby County.

Be it remembered that at a term of the chancery court of Shelby county, State aforesaid, began and held at the court-house, in the city of Memphis, in and for said county, on Monday, the 5th day of October, 1891, the same being the first Monday in October, 1891—present and presiding, the Hon. J. S. Galloway, probate judge, sitting by interchange with Hon. W. D. Beard, chan-
8 cellor, being incompetent—the following proceedings were had, to wit:

Original Bill No. 8087, *R. D.*

Filed 22d day of Oct., 1891.

THE STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, and The City of Memphis
vs.
THE UNION & PLANTERS' BANK and S. P. READ.

To the Hon. W. D. Beard, chancellor of the chancery court of Shelby county, Tennessee:

Complainants would respectfully state and show to the court as follows, to wit:

I. The above-named defendant, The Union & Planters' Bank, is a banking corporation organized under the laws of the State of Tenn., and having its situs and place of business in the city of Memphis, Shelby county, Tenn. By an act of the legislature of said State, passed on the 20th day of March, 1858, the Desoto Insurance & Trust Company was incorporated with all the powers, privileges and immunities and subject to all the pains, penalties and forfeitures of the act establishing the Bluff City Insurance Company of Memphis. Said act of incorporation will be found in the 12th section of chapter 166 of the Acts of 1857–'8.

The said act incorporating the Bluff City Insurance Company of Memphis will be found in the same chapter, to wit, 166, of the Acts of 1857–'8, and sections one to ten thereof, inclusive. By the tenth section of said act incorporating the Bluff City Insurance Company it was enacted, "that said company shall pay to the State of Tenn. an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes."

Said Desoto Insurance & Trust Company was empowered to do a general fire and life insurance business, with a capital stock of not less than $300,000. By the subsequent act of the legislature, passed Feb'y 12th, 1869, said corporation was authorized to abandon
9 the business of insurance and adopt that of banking, under the name and style of the Union & Planters' Bank of Mem-

phis, with the privilege of increasing their capital stock to a sum not exceeding $1,000,000, and retaining "all their present rights, privileges, and immunities, excepting that of insurance." Shortly after the date of said amending act the privilege aforesaid was accepted by the stockholders of the corporation, the name changed to that of the Union & Planters' Bank of Memphis, the business of insurance abandoned and that of banking adopted, and from that time forth to the present day the said corporation has been engaged in the banking business in the city of Memphis, its banking house and business being located and carried on in the 4th ward of the city, the capital, under the privilege granted by said amending act, being increased to and has been since that time maintained at $600,000, the same being divided into shares of $100 each.

For the year 1887 the capital stock of the defendant company was duly assessed both by the regular assessing officer and by the county trustee at the sum of $400,000.00; the municipal tax rate for that year $2.35, and the amount due from the defendant bank upon the theory that the shares of stock therein are exempt from taxation in the sum of $9,400.00, with interest from May 1st, 1887. For the year 1891 the capital stock of said Union & Planters' bank in Memphis was assessed at the sum of $456,000. The State of Tennessee for that year levied a total tax rate of $1.75 on every $100.00 of property in the city of Memphis, for the use of said city, and the said defendant corporation is therefore indebted to the State for the use of said city or to said city directly in the sum of $7,980, the unpaid tax on the capital stock aforesaid for said year 1891, and the sum last aforesaid bears interest at the rate of six per cent. per annum from the 1st day of May, 1891.

III. By section 14 of the general revenue laws of the State, passed in 1887, the same being chapter 2 of the acts of that year, it was enacted as follows, to wit: "Be it further enacted, that this act shall not be so construed, and shall not so operate, as to exonerate or release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted such company or corporation shall be assessed in such way as may be lawful; and in all cases in which by the terms or legal effect of the charter, the shares of the stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of stock is fixed and prescribed and declared to be in lieu of all the taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus."

"But, notwithstanding the provisions of said section, the capital stock of said corporation was not assessed for the years 1888, 1889, or 1890. Ascertaining this fact, the county trustee of Shelby county, as he was by law authorized to do, has duly assessed paid capital stock for the year aforesaid as follows, to wit:

For the year 1888	$400,000
For the year 1889	404,000
For the year 1890	675,000

For the year 1888 the city ad valorem was $2.35 on the $100.00. For the year 1889 the ad valorem taxation in and — the said city was $2.35 on the $100.

For the year 1890 the ad valorem taxation in and for said city levied by the State was $2.35 on the $100.00, so that said defendant corporation for the years aforesaid is indebted to complainant City of Memphis, or to the State for its use in the sums following, to wit:

For the year 1888	$9,400 00
For the year 1889	9,870 00
For the year 1890	11,926 25

Each of the several amounts aforesaid bears interest from the first day of May of the year for which the tax was levied.

IV. The defendant corporation claims that by virtue of its original charter and amendments thereto its capital stock is exempt from taxation.

Said capital stock is assessable and taxable under sec. 14 aforesaid of chapter 2 of the Acts of 1887, the said section having been continuously in force since said enactment to the present time.

For the year 1872 the State, county of Shelby, and city of Memphis, under the legislation of the State then in force under-
11 took to assess and tax as other property was assessed and taxed for that year the shares of the stock in the hands of the stockholders of said company. This effort to tax said shares of stock was resisted by said shareholders; litigation ensued in the second chancery court of Shelby county, Tenn. The controversy in that court was determined in favor of the shareholders and against the power of the State, county and city to tax the shares of stock, and appeal therefrom was taken to the supreme court of the State, in which the decree of said chancery court was reversed and a decree rendered in favor of the power of the State to tax said shares, from which last decree a writ of error was sued out from the Supreme Court of the United States, and under a hearing in that court the decree of the supreme court of Tenn. was reversed, the case remanded to that court with directions to enter a decree affirming the decree of the second chancery court of Shelby county negativing the power to tax said shares of stock in the hands of the stockholders. Complainants are advised that the capital stock in the hands of the corporation and the shares of stock in the hands of the stockholders are separate and distinct subjects of taxation; that in the absence of any exemption clause it was without the power of the State, without subjecting such legislation to the objection of double taxation, to have taxed both the capital stock of the corporation and the shares of stock in the hands of the stockholders; that the charter tax or bonus, or whatever else it may be called, of one-half of one per cent to be paid to the State is a tax upon the shares of stock, and that the language, "in lieu of all other taxes," means in lieu of all other

taxes on the shares of stock. It has no effect, as complainant is advised and charges, to exempt the capital stock of the corporation from taxation.

V. Complainants are advised that under the provisions of the act of 1887 aforesaid, which act, so far as is material to the questions here involved, has been continuously in force, the capital stock of said corporation or the shares of stock in the hands of the stockholders is or are taxable. They are further advised that the immunity and exemption embraced or claimed to be embraced in the charter of said defendant corporation cannot operate to exempt both the shares of stock and the capital stock in the hands of the corporation from taxation. Being advised and believing that both the corporation and the capital stock and the shares of stock could not successfully claim exemption from taxation, the assessing officers of the State have from year to year since and including the
12 year 1887 demanded of the proper officers of said corporation a list of the names of the persons owning the shares of stock therein on the 10th day of January of each year, but the said corporation, by its officers, claiming that the shares of stock were not subject to taxation, have refused to furnish the names of the shareholders in said corporation when demanded as aforesaid. The said officers accordingly for the years 1889 and 1890 assessed the shares of stock in the following form, to wit:

"Bank, Union & Planters'.

"Unknown shares and stock, 6,000 shares, $404,000," and the assessment for the year 1890 was made upon "the unknown owners of 6,000 shares of stock of Union & Planters' bank—valuation $675,000."

Complainants are not informed who are the owners of said shares of stock. They are informed that it is claimed in their behalf by the officers of the bank representing them that the said shares of stock are not taxable, and, even if taxable, the assessment is void for indefiniteness and uncertainty.

To the end that complainants may fairly and properly test the question as to whether, by legal effect of the charter of the defendant corporation, both the shares of stock in the hands of the stockholders and the capital stock in the hands of the bank are exempt from taxation. S. P. Read, cashier of said bank and the custodian of its books now and for many years heretofore, including the year 1887, is made a defendant hereto, and is required in his answer to state, under oath, from the books of said defendant corporation, the names of all persons, firms, or corporations owning shares of stock in said bank on the 10th day of January of each and every year, and the amount held by each since and including the year 1887. It is the purpose of the complainant, when the name- of such shareholders shall be furnished in the manner aforesaid, to have said shares of stock assessed for each of the years aforesaid and to bring the shareholders before the court in this proceeding by such amended and supplemental pleadings as may be necessary. Complainants do not claim that both the shares of stock in the hands of the shareholders

and the capital stock in the hands of the corporation was undertaken to be taxed by the legislature of the State, but they do claim that for and since the year 1887 the revenue laws of the State provided generally that the corporate property in the hands of the corporation should not be taxed, and that the shares of stock in such
13 corporation should be assessed to and taxed to the shareholders at their market value.

It was further provided by said act of 1887 and by the succeeding biennial session of the legislature of the State, as already appears by the quotation hereinbefore made of section 14 of the act of 1887, that the capital stock in the hands of the corporation should be taxed if by charter provisions the shares of stock were not subject to taxation. Wherefore complainant desires that both the corporation and the shareholders may be brought before the court in one proceeding, and that it may then be determined whether the tax is validly levied on the shares of stock in the hands of the stockholders or on the capital stock in the hands of the corporation. Complainants do not concede, but, on the contrary, deny, that the aforesaid assessment of the shares of stock for the years 1889 and 1890 are void and invalid, and when the names of the stockholders have been brought before the court the amount of tax due from each of them under said assessment will be shown and judgment prayed for against them.

VI. Complainants have been informed that since the adoption by the State of Tenn. of the constitution of 1870 the defendant banking company has increased its capital stock. It is advised in that event the new stock is taxable. It asks that the defendant, S. P. Read, may, on his oath, state in his answer whether or not the capital stock of the defendant banking company has been increased, and, if so, to what extent, since the adoption of the constitution of the State of 1870, to wit: since the 4th day of May, 1870, and that he may further on oath state the date or dates of such increase of stock, if it has been increased more than once since the date last aforesaid, and that from the books of said company he may furnish a list of the persons, firms, or corporations owning shares of stock on the 10th day of January of each year since and including the year 1887, that has been issued since the adoption of the constitution of the State, on the 4th day of May, 1870. This discovery on oath is asked to the end that the said shares of stock may be assessed so far as the same has not already been legally done, and that the owners thereof may — appropriate amends and supplemental pleadings be brought before the court in this cause for the purpose of enforcing and collecting the tax dues therefrom.

VII. By an act of the legislature passed March 19, 1889, and approved March 23, 1889, the same being chapter 104 of the
14 Acts of 1889, a privilege tax on banking within and for the city of Memphis (then the taxing district of Shelby county) was levied in terms following, to wit: "On the privilege of banking, $1 on every $1,000 of paid-in capital stock, but in no case less than $50 annually."

Complainants state that the amount of capital of the defendant

banking company since and during the year 1889 has been $600,000, and that under the enactment aforesaid the said defendant banking company is indebted to the State of Tenn., for the use of the City of Memphis, or to the City of Memphis directly in the sum of $600 annually, payable at the dates of the passage of the act last aforesaid for the year 1889, and on the first day of Jan'y for the years 1890 and 1891.

Premises considered, complainants pray that the parties named as such in the caption be made defendants hereto; that copy and subpœna issue, returnable to the next December rule day of the court; that the defendant corporation answer under its corporate seal; that the other defendants answer under oath the specific matters as asked in the body of the bill; that the court may determine whether the corporation or the shareholders therein have any immunity from taxation under the charter of said company; that complainants may have a decree against the defendant corporation for such taxes, with proper interest, as may be legally due from it, and may have such further and general relief as in equity they ought to have upon the facts stated.

F. T. EDMONSON,
METCALF & WALKER,
Sol's for Complainants.

Cost Bond.

We, the City of Memphis, as principal, and —— ——, as surety, acknowledge ourselves indebted to Union & Planters' Bank & *al.* in the sum of two hundred and fifty dollars; to be void if the said City of Memphis, complainant in a bill which has this day been filed in the chancery court of Shelby county against the said Union & Planters' Bank & *al.*, shall pay all such costs as may be awarded against it by the court in its decrees and orders in said cause.

This 22d day of October, A. D. 1891.

S. P. WALKER.
F. T. EDMONDSON.
C. W. METCALF.

15 *Demurrer of Defendants.*

Filed Nov. 6, 1891.

In Chancery Court of Shelby County, Tennessee.

STATE OF TENNESSEE, Use, &c.,
vs.
UNION & PLANTERS' BANK & S. P. READ, Cashier. } 8087, R. D.

Defendants demur to the bill filed against them on 22d Oct., 1891, as entered above on the rule docket. The ground of this demurrer is that the object sought by this bill is to enforce the payment of taxes by said bank in excess of the sum of an annual tax of one-half of one per cent. on each share of stock subscribed, which is the tax

by the terms of the charter contract between said bank and the State of Tenn., which shall be in lieu of all other taxes. Defendant says said bank is not liable for nor bound to pay the taxes demanded and sought to be collected, and that defendant Read, sued as the cashier, cannot be required to answer said bill nor make the discovery sought from bill in and of the effort to collect such taxes.

CRAFT & CRAFT,
Sol's for Defendant-.

Final Decree.

Entered M'ch 28th, 1892.

STATE OF TENNESSEE, &C.,
vs.
UNION & PLANTERS' BANK ET AL.

This cause came on to be heard upon bill of complaint and demurrer of defendant-, before his honor J. S. Galloway, judge of probate court of Shelby county, sitting in this court by interchange with Hon. W. D. Beard, who, having been of counsel in said case, was therefore incompetent to hear the same. Upon argument had by counsel the court orders, adjudges, and decrees that said demurrer is well taken upon all points therein set out, and the same is sustained and the bill of complaint dismissed with costs, for
16 which execution may issue against it and S. P. Walker, C. W. Metcalf and F. T. Edmondson, sureties on cost bond, from which the complainant prays an appeal to next term of supreme court to be held at Jackson, Tenn., on 1st Monday in April next, which appeal is granted upon complainants giving bond security for cost as the law directs.

Appeal Bond.

We, the State of Tenn., for use of City of Memphis, and surety, J. J. Williams, acknowledge ourselves indebted to the Union & Planters' Bank *et al.* in the sum of two hundred and fifty dollars; to be void of the said State of Tenn., for use, &c., who has prayed for and obtained an appeal from the decree of the chancery court of Shelby county, in a cause in which The State of Tenn., for use of City of Memphis, is complainant and The Union & Planters' Bank *et al.*, defendants, to the next term of the supreme court of Tenn., for the district of west Tenn., to be held at Jackson, Madison county, on the first Monday of April next, shall pay all such costs as shall be awarded it by said supreme court.

This 1st day of April, 1892.

STATE OF TENN., [SEAL.]
By METCALF & WALKER, *Att'ys.*
J. J. WILLIAMS. [SEAL.]

STATE OF TENN., }
Shelby Co. }

I, E. B. McHenry, clerk and master of the chancery court of Shelby county, do hereby certify that the foregoing 24 pages contain a full, true, and perfect transcript of all the proceedings had in a certain cause wherein The State of Tenn., for use, &c., — complainant, and Union & Planters' Bank *et al.*, defendant-, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and fixed the seal of said court, at office, in Memphis, this the 31st day of March, A. D. 1892.

[SEAL.] E. B. McHENRY, *C. & M.*,
By T. B. CALDWELL, *D. C. & M.*

THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the transcript
17 pronounced by said court at its April term, 1892, in the case of State of Tenn., use, &c., against Union & Planters' Bank *et al.*, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 24th day of March, A. D. 1893, and of the Independence of the United States the 117th year.

[L. S.] JOHN W. BUFORD, *Clerk*,
By W. H. TIDWELL, *D. C.*

THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at the April term, A. D. 1892.

Present: The Hon. W. C. Caldwell, acting chief justice, and D. L. Snodgrass, H. H. Lurton, L. Lehman, and B. J. Lea, associate judges, when the following proceedings were had, to wit:

JUNE 7TH, 1892.

STATE OF TENNESSEE, Use, &c., }
vs. } No. 50. Shelby C. D.
UNION & PLANTERS' BANK. }

This cause was heard upon the transcript of the record from the chancery court of Shelby county, and it appearing to the court that in the decree below is no error, it is therefore considered by the court that the decree be affirmed, complainant's bill dismissed, and the City of Memphis and S. P. Walker and C. W. Metcalf and F. T. Edmondson, sureties on cost bond, pay the costs of the court below, and they and J. J. Williams, surety on appeal bond, pay the cost of the appeal, for which let execution issue. The court adjudicates none of the points raised by the demurrer of the defendants

except those covered by and embraced in the opinion filed, being of opinion that such other points are immaterial after the ruling made in said opinion.

THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that
18 the foregoing is a true, perfect and complete copy of the decree pronounced by said court at its April term, 1892, in the case of State of Tenn., use, &c., against Union & Planters' Bank *et al.*, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this 24th day of March, A. D. 1893, and of the Independence of the United States the 117 year.

JNO. W. BUFORD, *Clerk*,
By W. H. TIDWELL, *D. C.*

Filed April 3, 1899.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D. 1898, at the United States court-house in the city of Memphis, in said district, on, to wit: the 3d day of April, A. D. 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS ET AL., Defendants. } No. 532.

This day comes complainant, by its solicitors, and files in this court here its bill in this cause and gives the usual bond for costs, and it is ordered that the usual summons issue to next rules.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis *et al.* Order of court. Entered and filed 3 day of April, A. D. 1899. John B. Clough, clerk.

The President of the United States of America to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to summons The City of Memphis, a municipal corporation by the laws of the State
19 of Tennessee, and John H. Alsup, trustee of the county of Shelby, in the State of Tennessee, citizens of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States in the sixth circuit for the western

district of Tennessee, at Memphis, in said district, on the first Monday in May next, and then and there to plead, answer or demur to the bill filed in the office of the clerk of said court on the third day of April, A. D. 1899, against said defendants by The Union & Planters' Bank, a banking corporation having its situs at Memphis aforesaid, operating under a special charter granted by the State of Tennessee, and who is a citizen of the State of Tennessee. Herein fail not, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Memphis, this third day of April, A. D. 1899, and the 123d year of American Independence.

[L. S.] JOHN B. CLOUGH, *Clerk.*

Memorandum.

The said defendants are required to enter appearance in this suit in the office of the clerk of the circuit court at Memphis, Tennessee, on or before the day on which the subpœna is returnable, or the allegations of the bill herein will be taken for confessed against said defendant and judgment rendered accordingly.

JOHN B. CLOUGH, *Clerk.*

Marshal's Return.

This writ came to hand on the date of its issuance, and I duly executed the same, as herein commanded, by making the contents thereof known to the within-named defendant, J. J. Williams, mayor of the city of Memphis, at Memphis, Tennessee, on the 7th day of April, A. D. 1899, and at the same time and place delivering to him a duly certified copy thereof together with such copy of the bill in this cause; and I further executed this writ by making known the contents thereof to the defendant, John H. Alsup, at Memphis, Tennessee, on the 7th day of April, A. D. 1899, and also then and there delivering to him like copy of the same, and of said bill; and I further executed this writ by making known the contents thereof to the defendant, —— ——, at ——, Tennessee, on the — day of —— A. D. 189–, and also then and there delivering to him like copy of the same, and of the said bill.

Memphis, Tennessee, —— — A. D. 189–.

T. H. BAKER,
U. S. Marshal,
By R. H. McNEELY, *Deputy.*

20 No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis, John H. Alsup, trustee. Summons. Issued 3 day of April, 1899. J. B. Clough, clerk. Returnable April A. D. 1899. Carroll & McKellar, Cooper & Waddell, attorneys.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D. 1898, at the United States court-house in the city of Memphis, in said district, on to wit, the 18 day of May, 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff,
vs.
CITY OF MEMPHIS ET AL., Defendant. } No. 532.

For satisfactory reasons to the court appearing it is hereby ordered by the court that the above cause in equity and all motions pending therein, be and the same are hereby continued to the next term of this court.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis *et al.* Order of court. Entered and filed 18 day of May, A. D. 1899. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1899, at the United States
21 court-house in the city of Memphis, in said district, on to wit, the 10 day of July, A. D. 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff,
vs.
CITY OF MEMPHIS ET AL., Defendant. } No. 532.

This cause coming on this day to be heard before the Hon. E. S. Hammond, judge, upon motion of defendant to dismiss the bill of complaint herein, for want of jurisdiction, which motion having been argued by counsel and considered by the court, it is ordered, adjudged and decreed by the court that said motion be overruled and defendants given five days in which further to plead.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis, *et al.* Order of court. Entered and filed 10 day of July, A. D. 1899. John B. Clough, clerk.

Circuit Court of the United States, Western District of Tennessee.

UNION & PLANTERS' BANK
vs.
CITY OF MEMPHIS and JOHN H. ALSUP, Trustee. } No. 532.

Demurrer. Filed Aug. 7, 1899.

Joint and several demurrer of the City of Memphis and John H. Alsup, trustee.

The City of Memphis and John H. Alsup, trustee of Shelby county, jointly and severally demur to the bill of complaint filed against them herein, and for grounds of their demurrer they say:

First. There is no diversity of citizenship and no Federal question involved herein, and this court is without jurisdiction.

Second. The complainant has an adequate remedy at law; hence this court has no jurisdiction.

Third. The complainant, if it is entitled to any redress at all has a plain and adequate remedy by paying under protest the tax demanded, and suing to recover back.

22 Fourth. The former adjudication set up in the bill must be limited to the taxes actually in litigation and the judgment relied on is not conclusive in respect of taxes assessed for other and subsequent years.

Fifth. Since the adjudication relied upon as a bar, the Supreme Court of the United States and the supreme court of Tennessee have expressly held and it is now the law that the complainant is not entitled to any exemption from taxation upon its capital stock, that the charter tax and charter exemption were upon and of the shares of stock and not the capital stock, and hence the right of the city to tax the complainant's capital stock is no longer an open Federal question, nor an open question of any sort.

Sixth. So much of the bill as relies upon a former adjudication of the question involved by the courts of Tennessee raises no Federal question, and as to this part of the bill the Federal court has no jurisdiction.

Seventh. By the injection into the bill of a Federal question, repeatedly decided in the courts of last resort against the bank's contention, the bill does not confer upon the Federal court jurisdiction of the purely local question of *res adjudicata*.

Eighth. The Federal court may assume jurisdiction so far as the bill relies upon an impairment of the obligation of a contract as an original question, but the Federal court should decline to exercise jurisdiction of the question of the weight and effect to be given to a former judgment of the State court.

Ninth. The capital stock of the complainant is by law subject to taxation by the City of Memphis.

Tenth. In the suit in which the judgment is relied on as a bar the parties were not the same, the statutes under consideration were

not the same, the questions of law and fact were not the same, and the subject-matter was not the same, as appear from the bill to be involved herein.

Eleventh. There is no equity on the face of the bill.

Wherefore the defendants pray that the bill be dismissed and that they go hence with their costs in this behalf; and will ever pray, &c.

JOHN H. WATKINS,
Solicitor for Defendants.

SHELBY COUNTY, }
Tennessee. }

John H. Alsup, makes solemn oath and says that he is one of the above-named defendants and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

JNO. H. ALSUP.

23 Subscribed and sworn to before me this 7th day of August, 1899.

[SEAL.] JAMES BRETT, JR.,
Notary Public.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JNO. H. WATKINS,
Counsel for Defendants.

UNITED STATES OF AMERICA, }
Western Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1899, at the United States court-house in the city of Memphis, in said district, on to wit, the 25 day of November, A. D. 1899, in the following cause, to wit:

UNION & PLANTERS' BANK, Plaintiff, }
vs. } No. 532.
CITY OF MEMPHIS ET AL., Defendant. }

For satisfactory reasons to the court appearing it is hereby ordered by the court that the above-entitled cause be and it is hereby continued to the next term of this court.

No. 532. Circuit court of the United States, western district of Tennessee. U. & P. Bank *vs.* City of Memphis. Order of court. Entered and filed 25 day of Nov., A. D. 1899. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof,
24 begun and held for its November term, A. D. 1899, at the United States court-house in the city of Memphis, in said district, on to wit, the 24 day of May, A. D. 1900, in the following cause, to wit:

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS ET AL., Defendant. } No. 532.

For satisfactory reasons to the court appearing it is hereby ordered by the court that the above cause be and it is hereby continued to the next May term of this court.

No. 532. Circuit court of the United States, western district of Tennessee. Union & Planters' Bank *vs.* City of Memphis. Order of court. Entered and filed 24 day of May, A. D., 1900. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1900, at the United States court-house in the city of Memphis, in said district, on to wit, the 5 day of November, A. D. 1900, in the following cause, to wit:

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS ET AL., Defendant. } No. 532.

This cause came on to be heard upon the application of the complainant to file a supplement to its original bill herein, and the court being advised in the premises, is pleased to order, adjudge
25 and decree that leave be granted, and accordingly the said bill is amended by adding before its prayer in the words and figures following:

"And now by way of supplement and amendment to the bill herein, by leave of the court first had and obtained, your orator avers that by an act of the General Assembly of the State of Tennessee, passed on the 21st of April, 1899, and approved on the 24th of April, of the same year, being chapter 435 of the session acts of that year, and particularly by the 26th section of said act, and

for the express purpose of imposing a tax on its capital stock," the General Assembly of the State of Tennessee, provided as follows: "Be it further enacted, that this act shall not be so construed, and shall not so operate as to exonerate and release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be assessed in such way as may be lawful; and in all cases in which, by terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of stock is fixed and prescribed, and declared to be in lieu of all other taxes for State, county and municipal purposes, shall be assessed and levied at a rate uniform with the rate levied upon other taxable property, upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate, and not less than the actual cash value of all the shares of stock in said corporation, including the net surplus. Provided, however, that where the State has provided in the charter of any such corporation or company that it shall pay a stated per cent. on each share of stock subscribed annually to the State, which shall be in lieu of all other taxes, it shall be entitled to a credit therefor upon its assessment of its capital stock, as hereinbefore provided."

And by the 76th section of the said act, it further enacted, among things, as follows: "Be it further enacted, that in all instances in which current municipal taxes are collected by the county trustee, the following provisions and rules for the collection of delinquent taxes that may be due to said municipalities, and none other, shall prevail and obtain, anything in this act to the contrary notwithstanding.

(1.) The taxes levied and assessed by such municipalities shall become due and delinquent on the dates as now provided by existing laws.

26 (2.) If such municipal taxes be not paid on or before the date fixed for the delinquency thereof, then a penalty of five per cent. thereon shall at once accrue. If the same be not paid on or before the first day of the following month, then an additional penalty of two per cent. thereon shall accrue, and an additional penalty of one per cent. shall accrue on the first day of each month thereafter that the same shall remain unpaid until such penalty shall reach the sum of ten per cent. on the original tax, whereupon the said penalty shall be no further increased.

(3.) The accrual of the penalty aforesaid shall in no respect affect the interest to be paid on said taxes from the date they become delinquent, such interest to be paid as if no penalty had been imposed."

And by the 81st section of said act it was enacted as follows: "Be it further enacted, that any officer whose duty it is to collect county or municipal revenue on property, or privileges, shall have the power, and it is hereby made his duty, where he cannot collect such taxes by the ordinary method of distress and sale, to bring any

and all suits necessary to be brought, or to intervene in any cause where the property, or its proceeds, is liable for the tax, is in the hands of a receiver appointed by either the State or Federal court, to obtain payment of the taxes from the property or its proceeds; and such officer is authorized to employ the necessary counsel to conduct suits and proceedings under this section, and in all suits or proceedings, ten per cent. shall be added to the recovery as counsel fees, in addition to the recovery. This section shall apply to any taxes now due and unpaid, as well as to any that may hereafter become due. A substantial compliance with the provisions of this act shall be sufficient to fix a lien for taxes, and no more irregularities in the assessment of property or polls, or a failure of any official herein named, or of any tax-payer to follow in strict detail the provisions of this act, shall invalidate the assessment of property or polls." And the complainant says that under the act last aforesaid the capital stock has been assessed for taxation for the year 1899, and upon which the defendants will, unless restrained by a writ issuing out of this court, subject it to other suits to collect municipal taxes for the year 1900, the effect of said assessment for the year 1899 being a cloud upon its title to its franchises and properties, and this notwithstanding that it is contractually exempt from the payment of ad valorem taxes upon its capital stock to the said city of Memphis by the judgment and decree of the supreme court of the State
27 of Tennessee, which finally and conclusively determined that the charter tax of one-half of one per cent. is in lieu of all other taxes against said bank on its capital stock, or against the owners of shares of stock. And your orator avers that all of said assessments are illegal, as has been adjudged heretofore, in the aforementioned cause, by the said supreme court of Tennessee, and in the suit aforesaid, which was a controversy between it and the said city of Memphis involving the direct question, upon identically the same facts as hereinbefore set forth, and impair the obligation of its contracts judicially construed, and violation of the contract clause of the Constitution of the United States, and that unless restrained by this honorable court, the defendant, The City of Memphis, and J. H. Alsup, *ex officio* collector of municipal taxes in said city of Memphis, will attempt to levy and collect taxes based upon the aforesaid illegal assessments, and will subject your orator to a multiplicity of suits in order to do so, and impose penalties as well and cast clouds upon its title to its franchises and property, as has hereinbefore — set forth. And the court is pleased to order that the said supplement be considered as incorporated in the original bill just before the prayer thereof, and that the prayer be answered by the insertion of the letters after the word "assessment" wherever it appears in said prayer.

Circuit Court of the United States, Western District of Tennessee.

UNION & PLANTERS' BANK *vs.* CITY OF MEMPHIS and JOHN H. ALSUP, Trustee.	No. 532. In Equity. Demurrer.

Joint and Several Demurrer of the City of Memphis and John H. Alsup, Trustee.

Filed Sept. 8, 1900.

The City of Memphis, and John H. Alsup, trustee, of Shelby county, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint, and its amended and supplemental bill of complaint contained, to be true, in such manner and form as the same is therein set forth and alleged, do jointly and severally demur to said original bill; also to said amended and supplemental bill, and for cause of demurrer show:

28 First. There is no diversity of citizenship, and no Federal question involved herein, and this court is without jurisdiction.

Second. The complainant has an adequate remedy at law; hence this court of equity has no jurisdiction.

Third. The complainant, if it is entitled to any redress at all, has a plain and adequate remedy by paying under protest the tax demanded, and suing to recover back.

Fourth. The former adjudication set up in the bills must be limited to the taxes actually in litigation, and the judgment relied on is not conclusive in respect of taxes assessed for other and subsequent years.

Fifth. The judgment set up as a bar was a judgment of a Tennessee State court adjudicating the liability of the bank for the taxes of certain years other than the years involved in this suit. In Tennessee a judgment in a tax case is not *res adjudicata* as to the taxes of any years except those actually in controversy. This court cannot give to or import into the judgment of the State court another or different effect than that possessed by the judgment under the laws of the State pronouncing the judgment. Hence the adjudication set up in the bills cannot be relied upon as bar to the recovery of the taxes involved in this suit.

Sixth. Since the adjudication relied upon as a bar, the Supreme Court of the United States have expressly held, and it is now the law, that the complainant is not entitled to any exemption from taxation upon its capital stock, and that the charter tax and charter exemption were upon and of the shares of stock, and not the capital stock, and hence the right of the city to tax the complainant's capital stock is no longer an open Federal question, nor an open question of any sort.

Seventh. So much of the bills as relies upon a former adjudica-

tion of the questions involved by the courts of Tennessee raises no Federal question, and as to this part of the bill the Federal court has no jurisdiction.

Eighth. By the injection into the bills of a Federal question repeatedly decided in the courts of last resort against the bank's contention, the bills do not confer upon the Federal court jurisdiction of the purely local question of *res adjudicata*.

Ninth. The Federal court may assume jurisdiction so far as the bills rely upon an impairment of the obligation of a contract as an original question, but the Federal court should decline to exercise jurisdiction of the question of the weight and effect to be given to a former judgment of the State court.

29 Tenth. The capital stock of the complainant is by law subject to taxation by the city of Memphis.

Eleventh. In the suit in which the judgment is relied upon as a bar, the parties were not the same, the statutes under consideration were not the same, the questions of law and fact were not the same, and the subject-matter was not the same, as appear from the bills to be involved herein.

Twelfth. There is no equity on the face of the bills.

Wherefore, and for divers other good causes of demurrer appearing in said original and amended and supplemental bills, the defendants jointly and severally demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said bills, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

JNO. H. WATKINS,
Solicitor for Defendants.

John H. Alsup makes oath that he is one of the above-named defendants; that the foregoing demurrer is not interposed for delay, and that same is true in point of fact.

JNO. H. ALSUP.

Subscribed and sworn to before me, this 8th day of September, 1900.

[L. S.] J. C. ADAMS,
Notary Public.

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

JNO. H. WATKINS,
Of Counsel for Defendants.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May-November term, A. D. 1900, at the
30 United States court-house in the city of Memphis, in said district, on to wit, the 6th day of November, A. D. 1900, in the following cause, to wit:

THE UNION & PLANTERS' BANK, Plaintiff,
vs.
THE CITY OF MEMPHIS, Defendant. } No. 532.

This cause came on to be heard before the Hon. E. S. Hammond, upon the application of complainant for a restraining order, and upon the demurrer of the defendants to the amended and supplemental bill of complaint. And the court being advised in the premises, is pleased to deny the application of the complainant, and is also pleased to adjudge and decree that the demurrer of the defendants to the original and the amended and supplemental bills be sustained. Wherefore, it is ordered by the court that the bill of complaint and also the amended and supplemental bill herein be dismissed at the cost of the complainant, for which execution may issue against it and William H. Carroll, the surety upon its cost bond.

And from the above decree the complainant prays an appeal to the circuit court of appeals at Cincinnati, at its next term, which is granted upon execution of a bond conditioned according to the Revised Statutes of the United States in such case *as* made and provided. And John H. Watkins, solicitor for the defendant, in open court appearing, waives the service of any citation upon the defendants of the appeal herein prayed.

In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

UNION & PLANTERS' BANK
vs.
THE CITY OF MEMPHIS.

The appellant, The Union & Planters' Bank, assigns error to the decree of the court below, sustaining demurrers to the original, amended and supplemental bills, because the appellant says it appears by the record herein that it was a banking corporation under a special act of the General Assembly of the State of Tennes-
31 see, and that in a suit instituted in the chancery court of Shelby county, Tennessee, to recover of it ad valorem taxes on its capital stock by the said City of Memphis, alleged to be due to it, the said City of Memphis, under the 14th section of the general

revenue laws of the State, passed in 1887, for the years from 1888 to 1890, inclusive, an issue was joined between the said City of Memphis and the appellant, and the identical question determined was in a suit mentioned and described in the bill of complaint, that by reason of the exemption contained in its charter, the appellant was contractually exempt from paying the said City of Memphis ad valorem taxes on its capital stock, and the record showing and setting forth the aforesaid judgment and decree, the same having been passed and entered by the supreme court of the State of Tennessee, and setting forth the conclusiveness thereof as against the ad valorem taxes claimed by the said City of Memphis for the years 1899 and 1900, under the 16th section of chapter 1 of the Acts of 1897, and the 26th section of chapter 435 of the Acts of 1899, upon assessments made thereunder, of the capital stock of the appellant, and that the aforesaid assessments and the revenue laws under which they were made, cast clouds upon appellant's title to its franchises, and the enforcement thereof was being attempted by the county trustee and the appellant about to be subjected to a multiplicity of suits, and to the imposition of penalties, it was error in the court to have dismissed the bill and not to have held:

I.

That the capital stock of the appellant was, by virtue of its charter, and the adjudications of the supreme court of the State of Tennessee, contractually exempt from the payment of the municipal taxes mentioned in the bill of complaint.

II.

It was error in the court in not sustaining the plea of *res adjudicata* and overruling the demurrers, and in not holding that the appellant was contractually exempt from the payment of municipal taxes upon its capital stock, and that the fact of that exemption was conclusively determined by the presumption of the thing adjudged arising upon the decree of the supreme court of the State of Tennessee in the suit between this appellant and the said City of Memphis, upon the precise facts involved, and where a similar revenue law was attempted to be enforced, and to have further held
32 that the attempt to enforce the assessments and taxes set forth in the bill of complaint would impair the obligation of the contract between the appellant and the State of Tennessee.

III.

It was error for the circuit court not to have held that the revenue laws of 1897 and 1899 were inoperative and inefficacious to impose a tax upon the appellant's capital stock, and the proceedings thereunder were illegal, because the exemption clause of the appellant's charter had previously received the judicial construction, in a suit between the said City of Memphis and the appellant, where the said city was attempting to enforce the collection of the tax under a law in all respects similar to the provisions of the revenue laws afore-

said, and the supreme court of the State of Tennessee having decided that the said tax was illegal by reason of the contract of exemption in appellant's charter, the question therefore of its liability for a like tax in subsequent years, was *res adjudicata*.

CANALL & McKELLAR AND
COOPER & WADDELL,
Sols. for Complainant.

Filed Nov. 5, 1900.

In the Circuit Court of the United States Western District of Tennessee, Western Division.

THE UNION & PLANTERS' BANK OF MEMPHIS
vs.
CITY OF MEMPHIS.
No. 532.
Supersedeas, Bond.

Know all men by these presents, that we, Union & Planters' Bank of Memphis, Tennessee, as principal, and S. P. Read and W. H. Carroll, as sureties, are hereby held and firmly bound unto said City of Memphis in the full and just sum of five hundred dollars, lawful money of the United States, to be paid to the said City of Memphis, for the payment of which, well and truly to be made, we hereby bind ourselves jointly and severally, and our joint and several heirs, executors and administrators, by these presents.

Signed by us, sealed with our seals, and dated at Memphis, Tennessee, this 17 day of September, A. D. 1900.

33 Whereas, the above-named principal has prosecuted a writ of error to the United States circuit court of appeals for the sixth judicial circuit, holden at Cincinnati, in the State of Ohio, to reverse the judgment rendered in the above-entitled suit against said principal by the circuit court of the United States for the western division of the western district of Tennessee.

Now, therefore, the condition of the foregoing obligation is such that if the above-named principal shall prosecute his said writ of error to effect, and answer all costs and damages if he fail to make his plea and the said writ of error good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

[SEAL.] UNION & PLANTERS' BANK OF MEMPHIS,
By S. P. READ, *R. S.*, [SEAL.]
S. P. READ. [SEAL.]
WM. H. CARROLL. [SEAL.]

Signed, sealed, delivered, taken and acknowledged before me at Memphis, Tennessee, this 5 day of November, A. D. 1900.

JOHN B. CLOUGH,
Clerk of said U. S. Circuit Court,
By W. B. WEISIGER, *D. C.*

Approved at Memphis, Tennessee, on the day of date of the said bond.

E. S. HAMMOND,
United States District Judge.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

United States Circuit Court of Appeals for the Sixth Circuit.

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Union & Planters' Bank of Memphis, Tennessee, and the City of Memphis a manifest error hath happened, to the great damage of the said Union & Planters' Bank, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice
34 done to the parties aforesaid in this behalf, do command you, if the judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the sixth circuit, together with this writ, so that you have the same at Cincinnati, in said circuit, on the 5th day of December next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court, the 5th day of November, A. D. 1900, and of the Independence of the United States of America the 125th year.

JOHN B. CLOUGH,
Clerk of the Circuit Court of the United States for the Western District of Tennessee,
By W. M. WEISIGER, *D. C.*

Allowed by—
E. S. HAMMOND,
United States District Judge.

In the United States Circuit Court of Appeals for the Sixth Judicial Circuit, Cincinnati, Ohio.

UNION & PLANTERS' BANK vs. CITY OF MEMPHIS. } No. —. Citation.

To the City of Memphis, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the sixth judicial circuit, at a session of said court to be held in the city of Cincinnati, in the State of Ohio, in said circuit, on the 5th day of December, A. D. 1900, pursuant to a writ of error filed in the office of the clerk of the

circuit court of the United States for the western division of the western district of Tennessee, wherein Union & Planters' Bank of Memphis, Tennessee, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment ren-
35 dered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 5 day of November, A. D. 1900, and of the Independence of the United States the 125th year.

E. S. HAMMOND, [SEAL.]
U. S. District Judge for the Western District of Tennessee.

Service acknowledged.

JNO. H. WATKINS.
Att'y for City of Memphis.

Sept. 17, 1900.

36 UNITED STATES OF AMERICA, }
Western Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D. 1900, at the United States court-house in the city of Memphis, in said district, on to wit: the 11th day of February A. D. 1901, in the following cause, to wit:

THE UNION AND PLANTERS' BANK, Plaintiff, }
vs. } No. 532.
THE CITY OF MEMPHIS ET AL., Defendant-. }

And from the decree entered in this cause on the 6th day of November 1900, the complainant prays an appeal to the next term of the Supreme Court of the United States, at Washington, which is granted upon its execution of a bond conditioned according to the Revised Statutes of the United States. And Jno. H. Watkins, Esq., solicitor for the defendant, in open court appearing, objected to the granting of said appeal and moved the court that said appeal be denied. But the court overruled said objection and granted said appeal. To which action of the court the City
37 of Memphis through its counsel, then and there excepted and reserved the benefit thereof, which said exception is allowed and ordered to be entered of record.

38 In the Circuit Court of the United States for the Western Division of the Western District of Tennessee.

Filed February 13, 1901. John B. Clough, Clerk.

UNION & PLANTERS' BANK *vs.* THE CITY OF MEMPHIS. } No. 532. Assignment of Errors.

The appel-ant, The Union & Planters' Bank, assign error to the decree of the court below, sustaining demurrers to the original, amended and supplemental bills, because the appel-ant says it appears by record herein that it is and was a banking corporation under a special act of the General Assembly of the State of Tennessee, and that in a suit instituted in the chancery court of Shelby county, Tennessee, to recover of it ad valorem taxes on its capital stock by the said City of Memphis alledged to be due to it, the said City of Memphis, under the 14th section of the general revenue laws of the State, passed in 1887, for the years 1888, to 1890, inclusive, an issue was joined between the said City of Memphis and the appel-ant, and that the identical question herein for judgment; was determined in the suit mention- and described in the bill of complaint, viz: that by reason of the exemption contained in its charter, the appel-ant was contractually exempt from paying the city of Memphis ad valorem taxes on its capital stock, and the records showing and setting forth the aforesaid judgment and decree of the supreme court of the State of Tennessee as being conclusive in its favor against the ad valorem taxes claimed by the City of Memphis for the years 1899 & 1900, under the 16th, section of chap. 1 of the Acts of 1897 and 26 section of the chapter 435 of the Acts of 1899, upon the assessments made thereunder, of the capital stock of the appel ant and the aforesaid assessments and the revenue law under which they were made, cast clouds upon the appel-ant's case title to its franchises and the enforcements thereof was being attempted by the county trustee and the appel-ant about to be subjected to a multiplicity of suits, and to the imposition of penalties it was error in the court not to have held:

39 I.

That the capital stock of the appel-ant was by virtue of its charter, and the adjudications of the supreme court of the State of Tennessee contractually exempt from the payment of the municipal taxes mention- in the bill of complaint.

II.

It was error in the court in not sustaining the plea of *res adjudicata* and overruling the demurrers and in not holding that the appel-ant was contractually exempt from the payment of municipal taxes upon its capital stock, and that the fact of that exemption was conclusively determined by the presumption of the thing adjudged arising upon the decree of the supreme court of the State of Ten-

nessee, in the suit between this appel-ant and the said City of Memphis upon the precise facts involved, and, where a similar revenue law was attempted to be enforced and to have further held that the attempt to enforce the assessment and taxes set forth in the bill of complain- would impair the obligation of the contract between the appel-ant and the State of Tennessee.

III.

It was error for the circuit court not to have held that the revenue laws of 1897 and 1899 were inoperative and inefficacious to impose a tax upon the appel-ant's capital stock, and the proceedings thereunder were illegal, because the exemption appellant's charter had previously received the judicial construction, in a suit between the said City of Memphis at the appel-ant, where the said city was attempting to enforce the col-ection of the tax under a law in all respects similar to the provisions of the revenue laws aforesaid and the supreme court of the State of Tennessee having decided that the said tax was illegal by reason of the contract of exemption in appellant's charter. the question therefore of its liability for a like tax in subsequent years was *res adjudicata.*

WM. H. CARROLL,
K. D. McKELLAR,
TIM. E. COOPER,
Counsel for U. & P. Bank.

40 In the Circuit Court of the United States, Western District of Tennessee, Western Division.

THE UNION & PLANTERS' BANK OF MEMPHIS *vs.* THE CITY OF MEMPHIS. } No. 532. Supersedeas Bond. Filed February 13th, 1901.

Know all men by these presents, that we Union & Planters' Bank of Memphis Tennessee, as principal, and K. D. McKellar and W. H. Carroll as sureties, are hereby held and firmly bound unto said City of Memphis and John H. Alsup trust. in the full and just sum of five hundred dollars, lawful money of the United States, to be paid to the said City of Memphis for the payment of which well and truly to be made, we hereby bind ourselves jointly and severally, and our joint and several heirs, executors and administrators by these presents.

Signed by us, sealed with our seals, and dated at Memphis, Tennessee, this 13th day of February, 1901.

Whereas, the above-named principal has prosecuted an appeal to the United States Supreme Court held at Washington in the District of Columbia, to reverse the judgment rendered in the above-entitled suit against said principal by the circuit court of the United States for the western division of the western district of Tennessee.

Now, therefore, the condition of the foregoing obligation is such that if the above-named principal shall prosecute its said appeal to effect, and answer all costs and damages if it fail to make its plea

and the said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

UNION & PLANTERS' BANK, [SEAL.]
By CARROLL & McKELLAR. [SEAL.]
W. H. CARROLL. [SEAL.]
K. D. McKELLAR. [SEAL.]

Signed, sealed, delivered, taken and acknowledged before me at Memphis, Tennessee, this 13th day of February, A. D. 1901.

JOHN B. CLOUGH,
Clerk of said U. S. Circuit Court.
W. B. WEISIGER, *D. C.*

Approved at Memphis, Tennessee, on the day of date of the said bond.

E. S. HAMMOND,
United States District Judge.

41 UNITED STATES OF AMERICA, } ss:
Sixth Judicial Circuit, }

United States Supreme Court for the Sixth Circuit.

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Union & Planters' Bank of Memphis Tennessee, *vs.* The Cit- of Memphis a manifest error hath happened, to the great damage of the said Union & Planters' Bank as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if the judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fifteenth day of March, A. D. 1901, next, in the said Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of said circuit court the 13th day of February, A. D. 1901 and of the Independence of the United States of America the 124 year.

JOHN B. CLOUGH,
Clerk of the Circuit Court of the United States for the Western District of Tennessee.

Allowed by—
E. S. HAMMOND,
United States District Judge.

42 In the Supreme Court of the United States.

UNION & PLANTERS' BANK OF MEMPHIS
vs.
CITY OF MEMPHIS. } No. 532. Citation.

To the City of Memphis and Jno. H. Alsup, trustee, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United S-ates, at a session of said court to be held in the city of Washington in the District of Columbia, on the 15th day of March A. D. 1901 pursuant to an appeal filed in the office of the clerk of the circuit court of the United States for the western division of the western district of Tennessee, wherein The Union & Planters' Bank of Memphis, Tennessee are appellants and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of February, A. D. 1901 and of the Independence of the United States the 124 year.

E. S. HAMMOND, [SEAL.]
U. S. District Judge for the
Western District of Tennessee.

43 Came to hand February 23rd, 1901, and executed on Monday February 25th, 1901 by reading this citation to J. J. Williams mayor of Memphis, J. J. Williams, D. P. Hadden and Hu. L. Brinkley, fire and police commissioners and John H. Alsup, trustee of Shelby county and leaving a copy of said citation with each of them.

T. H. BAKER,
U. S. Marshal,
R. B. FANNING,
Deputy Marshal.

44 THE UNITED STATES OF AMERICA, }
Sixth Judicial Circuit, Western District of Tennessee. }

I, John B. Clough, clerk of the circuit court of the United States, for the western division of said western district of Tennessee, do hereby certify that the papers hereto attached, are full, true, perfect and correct copies of the original record and proceedings in said court as the same now appears of record and upon the files in my office, in the following cause, to wit:

THE UNION & PLANTERS' BANK
vs.
THE CITY OF MEMPHIS and JOHN H. ALSUP, as Trustee of Shelby County, Tennessee. } No. 532.

Seal of the Circuit Court of the United States for the District of West Tennessee.

In testimony whereof, I have hereunto written my name and affixed the seal of said court, at my office in the city of Memphis, Tennessee, this 8th day of March, A. D. 1901, and of the Independence of the United States the 124th year.

JOHN B. CLOUGH, *Clerk.*

Authentication.

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, clerk of said court, and that his attestation is in due form.

E. S. HAMMOND,
Judge of the District Courts of the United States for the District Aforesaid.

[Endorsed:] No. 532. Circuit court of the United States, western district of Tennessee. The Union & Planters' Bank of Memphis *vs.* The City of Memphis *et al.*

Endorsed on cover: File No. 18,089. W. Tennessee C. C. U. S. Term No. 279. The Union and Planters' Bank of Memphis, Tennessee, plaintiff in error, *vs.* The City of Memphis and John H. Alsup, trustee. Filed March 23, 1901.